

**REMARKS**

Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow.

In the specification, paragraphs [0032], [0036], and [0038] have been amended on pages 6, 7, 8 and 9.

Claim 38 has been cancelled.

Claims 1-21, 23-27, 29, 31-32, 35-37 and 39-41 have been amended.

This amendment adds, changes and/or deletes claims in this Application. A detailed listing of claims that are, or were, in the Application, irrespective of whether the claim(s) remain under examination in the Application, is presented, with an appropriate defined status identifier.

Claims 1-37 and 39-41 are now pending.

**Objection to the Specification**

On page 2 of the Office Action, the Examiner objected to the Specification. The Specification has been amended. Applicants request withdrawal of the objection to the Specification.

**Claim Rejections – 35 U.S.C. § 112 ¶ 2**

On page 2 of the Office Action, the Examiner rejected Claims 16, 17, 20, 36, 37, 40 and 41 under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Claims 16, 17, 20, 36, 37, 40 and 41 have been amended, are definite and in compliance with 35 U.S.C. § 112 ¶ 2. Applicants request withdrawal of the rejection of Claims 16, 17, 20, 36, 37, 40 and 41 under 35 U.S.C. § 112 ¶ 2.

**Claim Rejections – 35 U.S.C. § 102**

**Claims 1, 21 and 23**

On page 3 of the Office Action, the Examiner rejected Claims 1, 21 and 23 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,366,099 titled “Adjustable Display Unit” to Schmid (“Schmid ‘099”).

The Examiner stated that:

[Schmid ‘099] discloses a merchandise system comprising: a base (16) having a front (20) and a back (14), see Figure 1; an assembly coupled to the base comprises a pusher member (26) configured to extend beyond the base; the base is configured to support articles/products and defining a first space between the front wall (20) and the pusher member and defining a second space between the pusher member to the back of the base, see Figures 1 and 2.

Schmid ‘099 is directed to an “adjustable display unit” including a “generally upstanding product follower member 26 mounted with respect to the base 16 for movement between the front end portion 12 and the rear end portion 14” (see Schmid ‘099 at col. 3, lines 19-22; and Figures 1-6) (emphasis added). Schmid ‘099 describes that:

[e]ach adjusting assembly comprises a freely rotatable pinion 42 mounted at each end of the base, the pinions being freely rotatable about an axis perpendicular to the plane of the base. Meshing with each of the pinions 42 are a pair of racks 44 which lie parallel to the plane of the base 16. One of the racks 44 is integrally formed with a respective one of the walls 18 while the other rack is integrally formed with the opposing wall 18 of the tray. The racks 44 are each stabilized by passing through a narrow slot 46 formed along the lateral edge at the bottom of base 16.

The flat face of each rack 44 is provided on one surface with a series of raised indentations 48 which coact with the slots 46 as detents or stops to permit the side walls 18 to be indexed laterally relative to the base 16 at pre-selected positions thereof.

(See Schmid ‘099 at col. 3, lines 62-68; col. 4, lines 1-4 and 8-12; and Figure 3).

Claim 1 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “first base” having sides wherein a “first side is configured to be coupled to the first base in a first position to define a first space,” wherein the “first side is configured to be coupled to the first base in a second position to define a second space,” and wherein the “assembly comprises a member configured to extend beyond the base to create a third space for containing the articles in addition to the first and second spaces.” Claims 2-23 depend from independent Claim 1.

Schmid ‘099 does not identically disclose a “merchandising system” comprising, among other elements, a “first base” having sides wherein a “first side is configured to be coupled to the first base in a first position to define a first space,” wherein the “first side is configured to be coupled to the first base in a second position to define a second space,” and wherein the “assembly comprises a member configured to extend beyond the base to create a third space for containing the articles in addition to the first and second spaces” as recited in independent Claim 1. The rejection of Claim 1 over Schmid ‘099 is improper. Claim 1 is patentable over Schmid ‘099.

Dependent Claims 21 and 23, which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Applicants respectfully request withdrawal of the rejection of Claims 1, 21 and 23 under 35 U.S.C. § 102(b).

**Claims 1-3, 6-14, 16-21, 23, 24-27, 29 and 30-41**

On page 3 of the Office Action, the Examiner rejected Claims 1-3, 6-14, 16-21, 23, 24-27, 29 and 30-41 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,724,968 titled “Device for the Presentation of Retail Articles” to Wombacher (“Wombacher ‘968”).

The Examiner stated that:

[Wombacher ‘968] discloses a merchandise system comprising: an expandable base (2 and 3) having a front (4), a back, and one or more side element (18), see Figure 1; an assembly coupled to the

base comprises a pusher member (26) configured to extend beyond the back of the base; the base is configured to support articles/products and defining a first space between the front wall (4) and the pusher member and defining a second space between the pusher member and the back of the base; a biasing mechanism (29) provides a biasing force to the member so that to advance the member toward the front of the base.

Wombacher '968 is directed to a “device for the presentation of retail articles” wherein a “head piece 4 is retained between the baseplates 2 and 3 and keeps them at such a distance apart that the retail articles to be displayed rest at least at their edges on the product supporting surfaces 5 and 6 of the baseplates 2 and 3” (see Wombacher '968 at col. 3, lines 1-5; and Figures 1-3) (emphasis added). Wombacher '968 describes that “[t]o hold head piece 4 on the baseplates 2 and 3, projections 12 and 13 are formed as retaining elements on the bottom side or underneath of the baseplates, engaging in corresponding openings 14 and 15 provided as corresponding counter-elements in the head piece 4 after the head piece 4 has been inserted between the two baseplates 2 and 3” (see Wombacher '968 at col. 3, lines 11-17; and Figures 1-3).

Claim 1 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “first base” having sides wherein a “first side is configured to be coupled to the first base in a first position to define a first space,” wherein the “first side is configured to be coupled to the first base in a second position to define a second space,” and wherein the “assembly comprises a member configured to extend beyond the base to create a third space for containing the articles in addition to the first and second spaces.” Claims 2-3, 6-14, 16-21 and 23 depend from independent Claim 1.

Wombacher '968 does not identically disclose a “merchandising system” comprising, among other elements, a “first base” having sides wherein a “first side is configured to be coupled to the first base in a first position to define a first space,” wherein the “first side is configured to be coupled to the first base in a second position to define a second space,” and wherein the “assembly comprises a member configured to extend beyond the base to create a third space for containing the articles in addition to the first and second spaces” as recited in

independent Claim 1. The rejection of Claim 1 over Wombacher '968 is improper. Claim 1 is patentable over Wombacher '968.

Dependent Claims 2-3, 6-14, 16-21 and 23, which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Claim 24 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “base” having sides, a “first projection configured to couple a first side to the base in a first position to define a first space and to couple the first side to the base in a second position to define a second space,” and a “member movably engaged with the base and configured to extend beyond the back of the base such that the system.” Claims 25-27, 29 and 30-37 depend from independent Claim 24.

Wombacher '968 does not identically disclose a “merchandising system” comprising, among other elements, a “base” having sides, a “first projection configured to couple a first side to the base in a first position to define a first space and to couple the first side to the base in a second position to define a second space,” and a “member movably engaged with the base and configured to extend beyond the back of the base such that the system” as recited in independent Claim 24. The rejection of Claim 24 over Wombacher '968 is improper. Claim 24 is patentable over Wombacher '968.

Dependent Claims 25-27, 29 and 30-37, which depend from independent Claim 24, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Claim 38 has been cancelled.

Claim 39 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “base,” a “first side comprising a first member that couples the first side to the base,” wherein the “width is adjustable” by providing the “first member in a first configuration wherein the first member is engaged with the first base and the first side is provided in a first position,” providing the “first member in a second configuration after being provided in the first configuration wherein the first member is disengaged from the first base,” and providing the “first member in a third configuration after being provided in the second configuration wherein the first member is engaged with the first base and the first side is provided in a second position.” Claims 40 and 41 depend from independent Claim 39.

Wombacher '968 does not identically disclose a “merchandising system” comprising, among other elements, a “base,” a “first side comprising a first member that couples the first side to the base,” wherein the “width is adjustable” by providing the “first member in a first configuration wherein the first member is engaged with the first base and the first side is provided in a first position,” providing the “first member in a second configuration after being provided in the first configuration wherein the first member is disengaged from the first base,” and providing the “first member in a third configuration after being provided in the second configuration wherein the first member is engaged with the first base and the first side is provided in a second position” as recited in independent Claim 39. The rejection of Claim 39 over Wombacher '968 is improper. Claim 39 is patentable over Wombacher '968.

Dependent Claims 40-41, which depend from independent Claim 39, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Applicants respectfully request withdrawal of the rejection of Claims 1-3, 6-14, 16-21, 23, 24-27, 29 and 30-41 under 35 U.S.C. § 102(b).

#### **Claims 1-28 and 30-41**

On page 4 of the Office Action, the Examiner rejected Claims 1-28 and 30-41 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,240,126 titled “Dispensing Rack Apparatus” to Foster et al. (“Foster et al. '126”).

The Examiner stated that:

[Foster et al. '126] discloses a merchandise system comprising: an expandable base (18) having a front (14), a panel connected to the front, see Figures 1 and 5, a back end (16) connected to at least one extension body (78 and 80), and one or more side element (78); an assembly coupled to the base comprises a pusher member (58) configured to extend beyond the back end of the base; the base is configured to support articles/products and defining a first space between the front wall (14) and the pusher member and defining a second space between the pusher member and the back end of the base; a biasing mechanism (52) provides a biasing force to the member so that to advance the member toward the front of the base; the base further has a beveled surface (94, 94a) near the back

end to connect to the extension body for allowing the articles to advance smoothly.

Foster et al. '126 is directed to a “dispensing rack apparatus” wherein:

the dispensing rack apparatus 10 can be seen to further include longitudinal interlock means 102 formed along each side of the main body by cooperatively shaped portions of the sides of the main body. One of the portions includes at least one beveled lug, such as lugs 104, 106. Another of the portions includes at least one cooperatively shaped beveled opening, such as beveled opening 108, 110 to receive similarly shaped beveled lugs formed on opposite sides of an equivalent dispensing rack apparatus.

In other words the longitudinal interlock means may be used to join the sides of two or more display apparatus placed adjacent one another on the storage shelf, by use of an equivalent pair of lugs 104, 106 and equivalent matching pair of beveled openings 108, 110.

(See Foster et al. '126 at col. 5, lines 44-58; and Figures 1-4) (emphasis added).

Claim 1 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “first base” having sides wherein a “first side is configured to be coupled to the first base in a first position to define a first space,” wherein the “first side is configured to be coupled to the first base in a second position to define a second space,” and wherein the “assembly comprises a member configured to extend beyond the base to create a third space for containing the articles in addition to the first and second spaces.” Claims 2-23 depend from independent Claim 1.

Foster et al. '126 does not identically disclose a “merchandising system” comprising, among other elements, a “first base” having sides wherein a “first side is configured to be coupled to the first base in a first position to define a first space,” wherein the “first side is configured to be coupled to the first base in a second position to define a second space,” and wherein the “assembly comprises a member configured to extend beyond the base to create a third space for containing the articles in addition to the first and second spaces” as recited in independent Claim 1. The rejection of Claim 1 over Foster et al. '126 is improper. Claim 1 is patentable over Foster et al. '126.

Dependent Claims 2-23, which depend from independent Claim 1, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Claim 24 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “base” having sides, a “first projection configured to couple a first side to the base in a first position to define a first space and to couple the first side to the base in a second position to define a second space,” and a “member movably engaged with the base and configured to extend beyond the back of the base such that the system.” Claims 25-28 and 30-37 depend from independent Claim 24.

Foster et al. ‘126 does not identically disclose a “merchandising system” comprising, among other elements, a “base” having sides, a “first projection configured to couple a first side to the base in a first position to define a first space and to couple the first side to the base in a second position to define a second space,” and a “member movably engaged with the base and configured to extend beyond the back of the base such that the system” as recited in independent Claim 24. The rejection of Claim 24 over Foster et al. ‘126 is improper. Claim 24 is patentable over Foster et al. ‘126.

Dependent Claims 25-28 and 30-37, which depend from independent Claim 24, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Claim 38 has been cancelled.

Claim 39 is in independent form and recites a “merchandising system” comprising, in combination with other elements, a “base,” a “first side comprising a first member that couples the first side to the base,” wherein the “width is adjustable” by providing the “first member in a first configuration wherein the first member is engaged with the first base and the first side is provided in a first position,” providing the “first member in a second configuration after being provided in the first configuration wherein the first member is disengaged from the first base,” and providing the “first member in a third configuration after being provided in the second configuration wherein the first member is engaged with the first base and the first side is provided in a second position.” Claims 40 and 41 depend from independent Claim 39.

Foster et al. ‘126 does not identically disclose a “merchandising system” comprising, among other elements, a “base,” a “first side comprising a first member that couples



the first side to the base,” wherein the “width is adjustable” by providing the “first member in a first configuration wherein the first member is engaged with the first base and the first side is provided in a first position,” providing the “first member in a second configuration after being provided in the first configuration wherein the first member is disengaged from the first base,” and providing the “first member in a third configuration after being provided in the second configuration wherein the first member is engaged with the first base and the first side is provided in a second position” as recited in independent Claim 39. The rejection of Claim 39 over Foster et al. ‘126 is improper. Claim 39 is patentable over Foster et al. ‘126.

Dependent Claims 40-41, which depend from independent Claim 39, are also patentable. See 35 U.S.C. § 112 ¶ 4.

Applicants respectfully request withdrawal of the rejection of Claims 1-3, 6-14, 16-21, 23, 24-27, 29 and 30-41 under 35 U.S.C. § 102(b).

Applicants believe that the present Application is now in condition for allowance. Favorable reconsideration of the Application as amended is respectfully requested.

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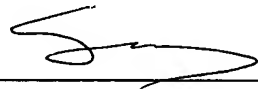
Applicants respectfully submit that each and every outstanding objection and rejection has been overcome, and the present Application is in a condition for allowance. Applicants request reconsideration and allowance of pending Claims 1-37 and 39-41.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present Application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this Application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to the Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extension fees to Deposit Account No. 06-1447.

Respectfully submitted,

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